REMARKS

In paragraph 2 of the Office Action, claims 5, 9 and 14-18 were rejected under 35 U.S.C.§112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.

Reconsideration is requested.

The claims have been canceled and new claims 25-48 have been added to point out the invention. Where necessary, each of the new claims has been modified from the prior claims to provide a proper antecedent basis for each of the terms in the claims. For this reason, it is requested that this ground of rejection not be applied against the newly presented claims.

In paragraph 4 of the Office Action, claims 1-12 and 14-23 were rejected for obviousness double patenting. In response, a Terminal Disclaimer is attached which will make the term of any patent granted on the present application coextensive with the term of U.S. 6,517,664. For this reason, it is requested that this ground of rejection be withdrawn.

In paragraph 6 of the Office Action, Claims 1-12 and 14-23 were rejected over Dronzek in view of Amberg.

Reconsideration is requested.

The Dronzek patent is not concerned with a microvoided polymer. The Amberg patent discloses the use of with a closed cell foamed material as a label stock. These low density foamed materials have a closed cell structure and would not allow adhesive to migrate into the label. The new claims provide that the microvoided label will allow water based adhesive to migrate into the film as disclosed in the specification at page 9, lines 4-5. This concept is not disclosed by Amberg who applies a hot melt type of adhesive to a foamed label structure that is not disclosed as having an open celled structure.

Attached hereto is a copy of a Declaration Under 35

U.S.C.§1.132 from copending Serial No. 10/292,231, filed November 12, 2002, which provides the results of tests that have been carried out to compare the results of using water based adhesives on closed cell polymer materials with open cell polymer materials.

The test results show that there is a greater migration of adhesive into open cell polymer materials as compared to closed cell polymer materials.

These results show that when a low density, open cell polymer film is contacted with a water based adhesive, a higher weight gain is seen as compared to a washed sample of a sample of a low density, closed cell polymer film which has been treated in the same manner. In addition, the adhesion of the low density open cell polymer film to a surface is higher than the adhesion of a closed cell, low density polymer film.

This data and the differences in the teachings of the prior art as compared to the claims before the Examiner, are persuasive that the combined teachings of the cited references fail to make obvious the claimed invention. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 7 of the Office Action, claims 1 and 23 were rejected under 35 U.S.C.§103(a) as being unpatentable over Jannusch in view of Amberg.

Reconsideration is requested.

The Jannusch patent has been applied as a primary reference which infers that there is some teaching in the reference that directs the skilled artisan to combine the Jannusch teachings with the Santiago teachings. At column 8, line 38, Jannusch mentioned polystyrene as the only example of a plastic. No mention was made of the use of polypropylene which is pointed out in applicant's claims 47 and 48.

Jannusch does not mention any foamed plastic substrate. Only by hindsight can Jannusch and be combined with Amberg because Amberg is only concerned with the application of a shrink wrapped sleeve with is "positioned" with a hot melt adhesive. In addition, Jannusch is silent as to the use of any

label substrate which allows water to migrate into the label.

The Jannusch patent is directed to a system which must use a caustic sensitive labeling adhesive that contains an active metal such as aluminum. The metal component is added to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Example XIII, are paper. There is no disclosure in Jannusch of any polymeric label having a density of less than 0.9. New claims 52-55 point out particular polymeric materials having a density of 0.55-0.85 as disclosed at page 9, line 14 of the specification. These materials are not disclosed or contemplated by Jannusch.

The text of the claims recites that a dried water based adhesive is within the polymer of the labels on the claimed containers

Jannusch is defective as a primary reference because it lacks a teaching of anything that would an artisan to combine the teachings of that reference with Amberg. The deficiency in the Jannusch patent is that patent is only concerned with the use of an adhesive which contains an active metal that functions to make the adhesive debonding in the presence of a strong base. The labels that are disclosed in Jannusch, in Example XIII, are paper and the plastic labels that are mentioned are not disclosed as having a low density of below 0.9.

The Amberg patent describes a labeling system which is based on the use of a foamed plastic which is shrink wrapped around a neck of a glass bottle. The foamed label may be applied with an adhesive prior to the assembly of a sleeve. The only adhesive that is disclosed in this patent is a "hot melt adhesive" (col. 8, lines 58-59). The hot melt adhesive does not result in a label which has a dried water based adhesive as pointed out in the amended claims. There is no mention as to whether or not the Amberg labels are even open celled foamed materials that could, if treated with a water based adhesive, have the adhesive taken in the open foam.

A further reason why it is not proper to combine the

teachings of Jannusch and Amberg because Jannusch is that Amberg is only concerned with non-foamed materials that are not even mentioned by Jannusch. For these reasons, it is requested that this ground of rejection be withdrawn.

In paragraph 8 of the Office Action, claims 2-12, 14 and 19-22 were rejected under 35 U.S.C.§103(a) as being unpatentable over Jannusch in view of Amberg and in further view of Navikas. In paragraph 9 of the Office Action, claims 15-18 were rejected under 35 U.S.C.§103(a) as being unpatentable over Jannusch in view of Amberg and in further view of Navikas and further in view of Kelly.

Reconsideration is requested.

The deficiencies of Jannusch and Amberg have been pointed out supraThe deficiencies of Jannusch and Amberg have been pointed out supra. Navikas is concerned with coating plastic surfaces with an organic solvent based composition to provide a place for a label with a water base adhesive to stick. There is no disclosure of the material that was used to make the labels and no disclosure of the use of a polymer label or a microvoided polymer in Navikas. The problems of ''tack'' and ''label swimming'' which are disclosed at page 6 of the present specification were not disclosed by Navikas. It is believed that polymer label stocks were not used in 1953 which is the filing date of the Navikas patent and Navikas cannot be read as disclosing the use of a polymer label. Nothing in any of the cited references provides a teaching or direction that supports the present combination of references.

The Kelly patent is concerned with the use of slip aids in combination with labels that are not made of low density polymers. Nothing in Kelly is concerned with microvoided polymer labels or with any common teaching in the other references of record. For these reason, it is requested that this ground of rejection be withdrawn.

An early and favorable action is earnestly solicited.

Respectfully submitted,

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